

Idaho Board of Health and Welfare
Minutes
January 17, 2008

The Board of Health and Welfare convened at:

Pete T. Cenarrusa Building
450 W. State Street, 10th Floor
Boise, Idaho

Board Members Present

Richard Roberge, M.D., Chairman
Quane Kenyon
Darrell Kerby
Tom Stroschein
Stephen Weeg
Richard Armstrong, Secretary

Staff Present

Richard Schultz, Deputy Director, Health Services
George Thomas, Deputy Director, Family and Welfare Services
David Taylor, Deputy Director, Support Services
Jeanne Goodenough, Deputy Attorney General
Kristi Matthews, Management Assistant to the Board
Elsie Boyd, Executive Assistant to the Director
Kathleen Allyn, Division of Behavioral Health Administrator
Jane Smith, Division of Health Administrator
Dia Gainor, Emergency Medical Services Bureau Chief
Sherri Kovach, Rules Unit Supervisor

Others Present

Karen McGee, Office of the Governor

CALL TO ORDER

Following proper notice in accordance with Idaho Code Section 67-2343 and pursuant to call by the Chairman, the meeting of the Idaho Board of Health and Welfare was called to order by Dr. Richard Roberge, Chairman of the Board, at 8 a.m. Thursday, January 17, 2008, at the Pete T. Cenarrusa Building, 450 W. State Street, at Boise.

ROLL CALL

Richard Armstrong, Secretary, called the roll. Roll call showed six members present. Absent and excused—Dan Fuchs, Janet Penfold, Senator Patti Anne Lodge, Representative Sharon Block, Sara Stover. With five voting members present, Chairman Roberge declared a quorum.

PUBLIC COMMENT PERIOD

Chairman Roberge opened the floor for public comment. There being none, the Board advanced to the next order of business.

ADOPTION OF BOARD MINUTES FROM THE MEETING HELD NOVEMBER 15 AND 16, 2007

Motion: Stephen Weeg moved for adoption of the minutes of the meeting held November 15 and 16, 2007.

Second: Quane Kenyon

Vote: Ayes: Kenyon, Kerby, Roberge, Stroschein, Weeg--5
Nays: None

Motion carried.

SUBCOMMITTEE REPORTS

Support Services

- The Department budget is in good shape; the Board budget shows a surplus. Since the support position for the Board has been filled, the Board's operating budget is expected to be fully spent.
- A system has been developed to track citizen concerns and legislative requests.
- Video conferencing capabilities in telemedicine have been expanded. The University of Idaho, four northern counties, hospitals, and Department staff are collaborating on this effort. The goal is to allow physicians and patients in rural communities to communicate face to face through teleconferencing rather than having the physician meet with the patient in person. This will allow the rural communities to utilize specialists.
- The Board report has been completed and delivered to the legislature.
- Audio press releases are now being provided to the media.
- Regional staff are expanding the effort to recruit foster parents. The First Lady will be working on production of a public service announcement. Regional Directors are providing support to the media in disseminating the message about the need for additional foster parents.
- Governor recommended a change in employee compensation to allow for a 5 percent increase to employees.
- Kristi Matthews has been hired as assistant to the Board. She comes with very good credentials. Her services will be shared with the Division of Human Resources.
- Governor Otter is recommending a 5 percent increase in pay for State employees. His plan also affects the insurance benefit by requiring a higher premium paid by employees; three insurance options will be offered.

Family and Welfare Services

- The national standard for the food stamp error rate is 6 percent. For fiscal year 2007 the Department is at an error rate of 6.5 percent. This has been maintained for seven months. The Department has had the highest caseload in its history of 38,000 cases.
- The food stamp program is in the process of changing the calculation of self employment.
- Applications for family Medicaid are now being processed in the same month at 100 percent, which is a marked change.
- The Department is making a targeted effort to identify children through the WIC program who may be eligible for the Child Medicaid Program (up to 185 percent of the federal poverty level). This is not to expand coverage, but an effort to get children into the Medicaid program who are already eligible but not accessing that program.
- The child care eligibility rate has been at 80 percent of the poverty level. That is being adjusted to 135 percent of the poverty level.
- The Office of Performance Evaluations reported eight areas needing change in response to the Joint Legislative Oversight Committee. Of that, seven areas have been remediated and the Department is working on the eighth.
- The turnover rate in Family and Community Services is down and the morale is up.
- The Department is looking for a place to put mentally ill patients who need security. The plan is to discharge ten individuals from the Idaho State School and Hospital into community care in order to make room for secure mental health patients.

Health Services

- The administrator at State Hospital North has retired. The Department is in the process of recruiting a new administrator and evaluating joint accreditation for that facility.
- A Board priority was to look at the Idaho State School and Hospital treatment capacity and to look at remodeling some cottages at the school. That was an approximately \$3 million budget item. Governor Otter put that request into the budget of the Division of Public Works rather than the Department's.
- The Interagency Committee for Substance Abuse Treatment and Prevention had a number of requests for expansion of services. The Governor has held the majority of those requests and added about \$2 million for drug court.
- For the past couple of years, the legislature has funded a \$2 million substance abuse/mental health development grant, one-time funding process. That request is not in the Department and the Office of Drug Policy budget request for substance abuse services.
- The joint accreditation survey process and a review of Medicare and Medicaid services in terms of quality of care have occurred at State Hospital South during the past six weeks. The hospital has passed both surveys with no major problems. The struggle at the hospital continues to be the relationship with the medical staff and trying to work through a number of issues with the medical staff, including a shortage of staff. A key issue has been the recruitment of additional psychiatrists.
- When a person is put into protective custody and hospitalized in a community facility, the county pays the cost of hospitalization up until the commitment hearing. Once the person is committed to the Department of Health and Welfare, the cost shifts to the Department.

If no room is available at one of the State hospitals, the person stays at the county hospital either until there is space available at a State hospital or the person is discharge back to the community. The number of patients at community hospitals waiting to be admitted is growing—in January 2007 there were 32 and in November 2007 there were 52. There is a projected deficit this year of approximately \$1.5 million. The cost is close to the cost of operating a State Hospital West, which is about \$450 per day per patient.

- Governor Otter has recommended \$7 million in the Division of Public Works budget for a secure mental health facility to be operated by the Department of Correction budget. Forty of three-hundred beds in the facility are dedicated to the Department of Health and Welfare. The time frame for construction of that facility is four to six years. Thus, the Governor is supporting the Department moving ahead with the 20-bed facility at Idaho State School and Hospital as an interim fix and possibly a long-term resolution should the Corrections facility not be able to meet the long-term demand.

DIRECTOR'S REPORT

- The Governor's Office has appointed a new Chief of Staff. Jason Kreizenbeck has reorganized by assigning liaisons to State departments. Karen McGee has been assigned to the Department of Health and Welfare and has been a tremendous asset to the Department. In addition to providing a communication link to the Department, she has provided a connection to the legislature.
- In his State of the State message, Governor Otter made it clear he wants to find a way to improve the efficiency of State government and the function of technology services. Through a series of meetings, Division of Information Technology Services Administrator Bruce Dunham has joint a team to address a number of statewide information technology issues, including the email system. In the interim, Dave Taylor will serve as lead for the Division of Information Technology Services. The Governor is also interested in dealing with broadband as another major initiative.
- The Health Quality Planning Commission was a product of the 2006 legislature. The Department of Health and Welfare was charged with organizing and managing this commission. Hospital and insurance industries are partnering with the Department to create a health data exchange, which will provide through a vendor contract access to a patient's electronic medical record. A provider will have at their fingertips health information about their patients, including pharmacy. The value is that with more information the outcome will be improved. This will be launched statewide, available to every hospital and provider in the state.

BOARD AUTHORITY DISCUSSION

- History of the Board
 - 1907 – Governor Frank Gooding appointed three physicians, the Attorney General, and the State Engineer to the first State Board of Health. Issues were vital statistics and contagious disease reports.
 - 1911 – Department of Vital Statistics created.

- 1937 – State Department of Public Health was separated into two divisions, Public Health and Public Welfare.
- 1941 – Charitable Institutions Commission added.
- 1971 – District Health Department created. Separate Department of Social and Rehabilitative Services and Environmental Protection and Health.
- 1972 – Environmental Protection added to form Department of Environmental and Community Services (DECS). Seven-member Board of Environmental and Community Services appointed.
- 1973 – Reorganization of State government into twenty departments. DECS consolidated with Department of Social and Rehabilitation Services; Veterans Affairs Commission and Idaho Veterans Home to become Department of Health and Welfare; Board became Board of Health and Welfare.
- 2000 – Department of Environmental Quality and Department of Veterans Services separated from DHW.

Based on this history, Idaho Code designates whether the Director or the Board has rulemaking authority for programs.

- Board Responsibilities—Idaho Code Section 56-1005 passed the Idaho Legislature in 2006 and relates to the issue of the Board's authorities. In addition to duties and authorities given to it over time, additional oversight responsibilities were specified. Those include: to advise the Director and Governor on Department fiscal policy and administrative matters; review and advise the Director regarding the strategic plan and performance measures; develop goals and standards to measure Department efficiency and effectiveness; and review and advise the Director and Governor on Department initiatives.
- Brief History of the Administrative Procedures Act
The Administrative Procedures Act provides for the law of how agencies operate and their authority in making rules and do adjudication functions. The concept of an administrative function is someone has perform the work the legislature has directed. The first mention of administrative function goes back to 1789. The predecessor of the Veterans Administration was first created to determine the pensions due those who fought in the Revolutionary War. In the 1800's we had a Customs Office; by 1887 we had the Interstate Commerce Commission because we needed to regulate railroads; many agencies were added in the early 1900's. Agencies in Idaho were authorized to promulgate rules, but there was no particular structure for doing that. By 1938 at the federal level, there was a special American Bar Association committee on administrative law; it developed a federal Administrative Procedures Act model law in 1946. Idaho copied a version of that law in 1965; in 1993 there was a major rewrite which brought about the current structure. There has been debate about whether agency rulemaking is usurping a legislative function by making law; rules have the force and effect of law which is not quite equal but almost. There has also been an issue about the separation of powers—are executive agencies usurping the right of the legislature to make law?

In 1991 the Board of Health and Welfare was critical in resolving this issue. A dispute existed between the Board, the legislature, and Pocatello's health district. Sewer rules written in 1985 were rejected by the legislature by concurrent resolution and Pocatello health district was refusing to apply the rules. The Board of Health and Welfare sued the legislature and the health district before the Idaho Supreme Court, asking the Court to stop the legislature's veto/rejection of these rules and to require the health district to apply them. Ultimately, the Court held that the legislature had not used the correct wording in rejecting the rules so they were not rejected and the health districts had to apply them. The legislature reiterated that only the legislature can make law, but they can delegate the power to the agencies to implement the law within the restriction of the law.

- Rulemaking Process

When the Department writes rules, a proposed administrative rules form is submitted to Legislative Services. It goes to the germane committees, which have an opportunity to review the rules at that time. A moratorium goes into effect in mid November and continues through the end of the session. Agencies cannot submit proposed rules during this time. Proposed rules are rules written in order to do our business better or to clarify something. Proposed rules cannot go into effect until the legislature adjourns. Rules are submitted to the Administrative Rules Coordinator at the Department of Administration, and publish after four weeks. Rules are published in the Administrative Bulletin; a 21-day comment period must be provided; and there may be some hearings.

The Department is also authorized to do negotiated rulemaking, which can be noticed in the Bulletin with the date, place, and time of hearings. Changes may have to be made to the text as a result of comments. The rules are adopted and become pending rules because they are pending review by the legislature. The pending rules are sent back to the office of the Administrative Rules Coordinator, the pending rules are printed in the Bulletin, and the moratorium begins. This process takes nearly a year before the rules can go into effect.

In order to make a temporary rule, the rule must meet specific criteria, including protect the public health, safety and welfare; meet a deadline in State or federal law; or designate a benefit. The legislature must continue the rules in effect or they die. A retroactive effective date can be named if it meets the criteria. Temporary rules can be adopted during the legislative session.

Rules can be deemed temporary and proposed at the same time. Any changes to the proposed rules as a result of comments may require an amend to the temporary rules at the same time because the temporary rules will be in effect before the proposed rules.

The legislature has three options when dealing with rules: 1) approve the rule; 2) reject the rule; or 3) amend a section of the rule. It has the authority to modify a rule, but has been advised not to do that.

The Board of Health and Welfare has the option to modify a rule more broadly than that of the legislature. The Department has the authority to pull rules when the Department does not agree with the Board decision. The Board has the authority to adopt rules that have progressed through the Administrative Procedures Act process, but not to initiate.

- Hearing Processes

When a decision is issued by the Department, a person can appeal that to a hearing officer, then appeal further to the Director or the Board, depending on whose authority is involved in the case.

The normal model for an argument to the Board is the appellant presents first because they are trying to persuade the Board that the hearing officer's decision was wrong. Then the person responding (the Department, in most cases) presents their argument. Then as a matter of fairness the appellant can rebuff argument in order to clarify. This process is followed for most appeals. Rules governing the appeal process give the Board the right to exercise all the same powers as the hearing officer, so asking questions is permissible. The Board may also request to consult with a subject matter expert. The Board's decision should only be based on the record. If the Board receives additional information they feel was not presented to the hearing officer for good cause, the appeal will be remanded to the hearing officer.

- Overview of Confidentiality Rules

The essential structure of the Department's confidentiality rule includes: 1) the ability to obtain an authorization. The application for services includes an acknowledgement by the applicant that their information may be used within the Department for work purposes. The authorization gives permission from the person for the Department to use a person's information outside our work process. Information is shared within the Department only on a need-to-know basis and only the minimally necessary information will be shared. Department employees are expected to question what information might be necessary. There are times when information might be released without authorization. Federally recognized advocacy agencies are allowed to review client information as a function of their oversight. When a person is deemed dangerous and the Department has a duty to report, that can be done without an authorization. Certain information can be shared with an informal representative; this includes someone who accompanies the individual to all appointments. In the case of legislators, they can be regarded as an informal representative when they are seeking information on behalf of an individual. This could also apply to a Board member. Board members who receive complaints from clients should direct those concerns to Kristi Matthews, who can follow through on obtaining the information and providing a response to the client on behalf of the Board. Generally, when an individual seeks assistance from a Board, it is because they have exhausted other avenues in the Department and are seeking any assistance they might find. The individual has the greatest access to their own record. Exceptions might be when the Department has determined providing the information to an individual might cause them harm.

HORSESHOE BEND AMBULANCE WAIVER

The Bureau of Emergency Medical Services regulates all ambulance services and non-transport quick response units in the state. Idaho law requires every ambulance services be available to respond on a twenty-four hours a day, seven days a week, basis. In the event a service is unable to comply with that requirement and it would cause undue hardship on the community being served, a waiver must be obtained by the Board of the Department of Health and Welfare for the service to continue operating in that community temporarily. The City of Horseshoe Bend has had significant problems retaining volunteer personnel to provide these services. The City is requesting a 6-month waiver from the Board of Health and Welfare to allow time to recruit and train additional personnel, at which time they expect to provide services on a 24/7 basis. The Emergency Medical Services Bureau assures that whenever Horseshoe Bend Ambulance is not available to respond, those services will be provided by other agencies.

Motion: Quane Kenyon moved that the Idaho Board of Health and Welfare approve the request by the Horseshoe Bend Ambulance for a waiver of the twenty-four hour-a-day, seven day-a-week coverage in accordance with Section 56-1016, Idaho Code, until July 17, 2008, by which time the 24/7 response requirement must be met..

Second: Stephen Weeg

Vote: Ayes: Kenyon, Kerby, Roberge, Stroschein, Weeg--5
Nays: None

Motion carried.

Chairman Roberge asked that the issue be brought again before the Board at its July meeting if the situation has not resolved.

GOVERNOR'S BUDGET RECOMMENDATION

Overall the Governor has recommended a budget of \$1, 890 million dollars. This reflects a total fund increase of 7.6 percent. Substance abuse decision units have been pulled from the Department request and put into that of the Office of Drug Policy. The maintenance level funding, including employee benefits,

The personnel recommendation reflects not only the Governor's recommendation of a five percent change in employee compensation, but also the catch-up on employee health insurance of \$2,000 per individual. Over the last two years, reserves within the employee insurance funds have been used to cover increased costs of health insurance. Preliminary numbers show an increase in cost to the employee of \$50 per month.

Inflationary increases reflect general inflation plus the cost of inflators built into contracts and leases, but not inflations in utilities or gas. The increase to the agency is approximately \$1.3 million, primarily related to contracts and some of the medical costs related to the institutions.

For capital outlay, the increase is approximately \$4 million, which is about 60 percent of the agency request. The cut was primarily in cars; the Department policy has been to replace a car after ten years or 120,000 miles. With the Governor's recommendation, the Department will be able to replace approximately half of the cars that meet these guidelines. An allowance was added of approximately \$6,000 per vehicle to apply more energy-efficient vehicles.

Nondiscretionary adjustments include \$98 million for increased costs in Medicaid plus the cost of foster care increases. The base is at \$1.8 billion.

Some supplemental requests have been heard in the legislature, including a request for State Hospital North, for the Medicaid audit at State Hospital South, for the Jeff D. lawsuit attorney fees, and costs at Idaho State School and Hospital. The cost of influenza vaccine has been moved to a decision unit for fiscal year 2009.

Within Substance Abuse, the Department requested \$1 million in spending authority from the Substance Abuse Treatment Fund to cover final payments for treatment of individuals admitted under the ATR grant. That decision unit was not recommended for funding, therefore, payment will be made out of existing funding rather than through a supplemental.

Still to be considered in terms of general fund supplemental requests are the Health Information Data Exchange and a Medicaid negative supplement which consists of unspent Medicaid funds in the current-year appropriation.

CONFIRMATION OF SUPPORT SERVICES DEPUTY DIRECTOR DAVID TAYLOR

David Taylor came to the Department from The AIM Company, where he worked as Vice President of Finance and International Operations for 5 years. Prior to that, Mr. Taylor was Chief Financial Officer and Associate Director at Mountain States Group, Inc., in Boise. He is a Certified Public Accountant and Certified Fraud Examiner, and is experienced in working with grants.

Motion: Quane Kenyon moved that the Idaho Board of Health and Welfare confirm the appointment of David Taylor as Deputy Director of Support Services, Department of Health and Welfare.

Second: Stephen Weeg

Vote: Ayes: Kenyon, Kerby, Roberge, Stroschein, Weeg--5
Nays: None

Motion carried.

ADJOURNMENT

The next meeting of the Board of Health and Welfare is scheduled to be held March 20 and 21, 2008. There being no further business to come before the Board, Chairman Roberge adjourned the meeting at 2:38 p.m.